

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 168

June 25, 1996, 2:16 p.m.
Page S-6817 Temp. Record

SENATE CAMPAIGN FINANCE/Cloture

SUBJECT: Senate Campaign Finance Act of 1996 . . . S. 1219. Lott motion to close debate.

ACTION: CLOTURE MOTION REJECTED, 54-46

SYNOPSIS: As amended, S. 1219, the Senate Campaign Finance Bill, will induce Senate candidates to limit their campaign spending by offering them 30 minutes of free broadcast time, a broadcast discount for additional time (equal to 50 percent of the lowest advertising rate), and reduced postage rates. Total spending limits for primary and general campaigns will range from around \$1.5 million in smaller-population States to about \$8.1 million in California. The bill also will ban political action committee (PAC) contributions to candidates (if this ban is held unconstitutional, PACs instead will be limited to giving \$1,000 per candidate per election). Other key provisions include a ban on political party "soft money" expenditures and a ban on most "bundling." Details are provided below.

Spending limits for primary, general, and runoff elections:

- the primary election spending limit will be the lesser of 67 percent of the general election limit or \$2.75 million (which will be indexed to inflation);
- the general election spending limit will be the lesser of \$5.5 million or \$400,000 plus additional sums based on the number of eligible voters in a State, but the limit in no case will be less than \$950,000 (these numbers will be indexed to inflation); and
- the runoff election spending limit will be 20 percent of the general election spending limit.

Exceptions to the spending limits:

- in any election, if a candidate is in compliance with the applicable limit and is otherwise eligible for this bill's benefits and has an opponent who is ineligible who exceeds the limit by 10 percent, the limit will be raised 20 percent for the eligible candidate; if the excess spending by the noneligible candidate is 50 percent, the limit will be raised 50 percent; if the excess spending is 100 percent, the limit will be raised 100 percent;

- if a noneligible candidate raises funds in excess of 50 percent of the applicable limit, an eligible candidate will be allowed to raise an extra 50 percent, but may not spend it until the ineligible candidate spends the excess funds; and

(See other side)

YEAS (54)			NAYS (46)			NOT VOTING (0)	
Republicans (8 or 15%)	Democrats (46 or 98%)		Republicans (45 or 85%)	Democrats (1 or 2%)		Republicans (0)	Democrats (0)
Cohen	Akaka	Johnston	Abraham	Gregg	Heflin		
Jeffords	Baucus	Kennedy	Ashcroft	Hatch			
Kassebaum	Biden	Kerrey	Bennett	Hatfield			
McCain	Bingaman	Kerry	Bond	Helms			
Simpson	Boxer	Kohl	Brown	Hutchison			
Snowe	Bradley	Lautenberg	Burns	Inhofe			
Specter	Breaux	Leahy	Campbell	Kempthorne			
Thompson	Bryan	Levin	Chafee	Kyl			
	Bumpers	Lieberman	Coats	Lott			
	Byrd	Mikulski	Cochran	Lugar			
	Conrad	Moseley-Braun	Coverdell	Mack			
	Daschle	Moynihan	Craig	McConnell			
	Dodd	Murray	D'Amato	Murkowski			
	Dorgan	Nunn	DeWine	Nickles			
	Exon	Pell	Domenici	Pressler			
	Feingold	Pryor	Faircloth	Roth			
	Feinstein	Reid	Frahm	Santorum			
	Ford	Robb	Frist	Shelby			
	Glenn	Rockefeller	Gorton	Smith			
	Graham	Sarbanes	Gramm	Stevens			
	Harkin	Simon	Grams	Thomas			
	Hollings	Wellstone	Grassley	Thurmond			
	Inouye	Wyden		Warner			

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

● if the Federal Election Commission (FEC) notifies an eligible candidate of independent (soft money) expenditures greater than \$10,000 in favor of an opponent or in opposition to the eligible candidate, then that candidate may spend an equal amount without regard to the applicable limit.

Eligibility for benefits from this bill:

- a candidate will have to agree to the applicable spending limits;
- no more than 10 percent of the funds spent may be from the candidate or the candidate's family, with a maximum personal contribution limit of \$250,000 per election cycle;
- the candidate will have to raise the lesser of 10 percent of the general election limit or \$250,000 before any benefits will be given; and
- at least 60 percent of the funds raised must be from in-State contributors, or, in small States at least 60 percent of the contributors must be in-State and all contributors who give more than \$20 must be reported to the FEC.

Benefits:

- each eligible candidate will receive 30 minutes of free broadcast time in prime time viewing hours, unless running unopposed or unless there is an eligible minor party candidate (who will receive part of each candidate's 30 minutes);
- the personal contribution limit will be doubled to \$2,000 for eligible candidates;
- each eligible candidate will be entitled, without limit, to a broadcast discount equal to 50 percent of a station's lowest rate; and
- each eligible candidate will receive reduced postage rates.

PACs:

- only individuals and political parties will be allowed to give contributions to candidates for Federal office;
- if the ban on PAC contributions is ruled to be unconstitutional, then the limit on the amount that a PAC may give to a candidate in an election will be reduced from the current \$5,000 to \$1,000 (which is the current individual limit), and the total percentage of funds that a candidate will be allowed to receive from PACs will be 20 percent; and
- independent (soft money) PAC expenditures will not be banned.

"Soft money" expenditures (political expenditures made independently of candidates that are not on behalf of particular candidates and that are not subject to the Federal Election Campaign Act):

- in general, no Federal, State, or local committee of a political party may make any independent expenditure that might affect the outcome of a Federal election;
- no other soft money expenditures will be banned, such as the money spent by unions, but they will have to be reported if they are in excess of \$10,000.

Bundling:

- in general, individual contributions that are collected by an intermediary (bundler) on behalf of a candidate will be treated as contributions by the bundler as well as by the individual contributors.

Miscellaneous:

- FEC regulations will be codified that prohibit the use of campaign funds for purposes that are inherently personal;
- Members will not be allowed to use the frank for mass mailings during years in which they are running for re-election;
- non-partisan voting guides will not be included under the definition of express advocacy for reporting requirements;
- the definition for "independent expenditures" that are made on behalf of a candidate without any involvement of that candidate will be clarified; such expenditures will include expenditures that help a candidate by expressing support for a group of candidates or a particular political party;
- reporting requirements will be placed on independent expenditures;
- the FEC will be given the names and addresses of anyone who contributes \$50 or more to a candidate; and
- any constitutional challenges to the provisions of this bill will receive expedited review.

Those favoring the motion to invoke cloture contended:

The question before the Senate today is not whether they support the particular provisions of this bill, but whether they believe that a campaign finance reform bill should be passed this year. Invoking cloture on this measure will not lock its contents in stone; it will still be open to amendment. Conceivable, after invoking cloture, the Senate could agree to a series of amendments that would totally change the nature of the reforms. As long as those amendments had been filed on time and were germane, they would be in order. Thus, the individual details as they now stand are not that relevant.

The need for campaign finance reform is self-evident. The reality of Federal elections is that a viable candidate needs to be able to raise enormous sums of money and must spend a great deal of time raising it, and the perception is that those candidates who win are under the control of the people who gave money to their campaigns. Every Senator is intimately and painfully aware of the validity of these statements. The average Senator must now spend most of his or her time raising money. Both parties actively seek candidates who are willing to finance their own campaigns or who already have the connections needed to get campaign contributions. Political campaigns have become a high-stakes poker game where ideas and issues matter less than money.

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Americans' faith in the political process is being destroyed by this system. Average Americans will not even consider running for office because they know that without money their candidacies would be irrelevant, and they believe, wrongly, that Senators' votes are bought by their campaign contributors. Even contributors think that they are buying our votes when they give us contributions--we have had the distasteful experience, as we are certain our colleagues have had as well, of contributors who have implied that we have reneged on an agreement with them when we have subsequently gone against their wishes on a vote. The fact is that we do not know of any Senators who can be bought with contributions, but that is the nearly universal perception in poll after poll. A representative democracy cannot operate effectively if its people do not think that its leaders actually represent them.

Our colleagues have raised a number of particular objections to this bill. For instance, they have suggested that it is unconstitutional to give television and postal benefits to candidates who agree to limit their spending. Most constitutional scholars disagree, though we admit that there are some exceptions, such as the American Civil Liberties Union (ACLU). Whether these benefits are eventually found unconstitutional or not, though, should not stop us from passing this bill. Senators are not Supreme Court Justices. When considering a policy, if they are told by all experts that it is clearly an unconstitutional policy, then they should not pass it, but when it is not clear then they should consider the merits of the policy and leave the constitutional decisions to the courts.

Other Senators have suggested that too little, not too much, money is being spent on elections. They have compared campaign spending to such matters as advertising on consumer products. These Senators are missing the point. The problem is that incumbents spend much more money than challengers because they are able to raise much more money. History has shown that whoever spends the most money is almost always going to be the winner. It does not matter whether the candidate is from the right or the left--one of the most accurate predictors of who will win is who will spend the most money. Members well understand this fact, and consequently the amount that they spend on each election has been steadily rising. Senators now raise an average of \$15,000 per week every week for 6 years for their reelection efforts.

A lot of the complaints that we have heard are basically that we have not accomplished all the reforms that are necessary. For instance, some Senators have said that if we put restrictions on political parties, we should put the same restrictions on unions and other sources of independent political spending. If our colleagues do not believe that this bill is perfect, let them offer amendments.

We are not asking our colleagues to endorse the provisions of this bill. We are urging them to join us in agreeing to amend it and pass it by a time certain. If cloture is invoked, we may well end up with a bill that is substantially different than the bill that is before us. If we do not invoke cloture, no reforms will pass, and we will be stuck with the same rotten campaign finance system that poll after poll shows is eroding the American people's confidence in Congress. This bill is perhaps the most important reform bill that Congress will consider this year. We urge our colleagues not to defeat it by refusing to close debate.

Those opposing the motion to invoke cloture contended:

Argument 1:

S. 1219 starts from the mistaken premise that too much money is spent on political campaigns and it then wrongly assumes certain forms of campaign spending are inherently corrupt. Based on these mistakes, it will adopt coercive spending limits and will place unconstitutional restrictions on various forms of campaign contributions. Those actions will place a straightjacket on the ability of candidates to get their views to the American people, while doing little or nothing to stop other groups from spreading their political messages. The result will be a massive distortion of the democratic process that will give much greater power to the special interest groups that our colleagues say they are trying to limit with this bill.

Last election, the combined amount spent by all candidates for all Federal offices was roughly \$600 million. The American people spent the same amount on bubble gum, and nearly twice as much on yogurt. American companies, to get companies to buy their products, spent \$174 billion on advertising. Political campaigning, in essence, is political advertising of a candidate's views. In a free republic, the decisions that are made by the citizenry over who should represent them are certainly more important than the particular brands of consumer products they choose to buy, yet campaigns spent just a little more than one-quarter of one-percent of the amount that was spent on other advertising. The United States is a very large country with large numbers of constituents in each congressional district. To reach the people, a candidate needs to use the media, and to use the media a candidate needs money. The huge amount of advertising that is done to sell products is done because that is how much it costs companies to get their advertising messages to the people. The low amount of money that candidates spend compared to other advertising indicates that they are not getting their messages out. We often hear the complaint that campaigns for Congress are now being waged in a few 30-second soundbites--perhaps so, but that is what candidates can afford. Eighty percent of all campaign spending is on television, because that is where the voters get most of their information. Of course, the voters receive plenty of information on candidates from sources other than the candidates themselves. They are constantly bombarded with slanted news stories and editorials by newspapers and television news shows on the candidates, they receive information from citizens groups and special interest groups like unions, and they see ads run by political parties. The candidates' voices are just one small part of the competing din in an election. This bill says that those candidates' voices are too loud, and it is designed to get them to shut up through the use of a series of coercive, unconstitutional measures.

In *Buckley v. Valeo*, the Supreme Court ruled that the only spending limits that are constitutional are strictly voluntary limits. Candidates may be induced to agree to limits by being offered benefits, but they may not be coerced by receiving punitive treatment if they do not. This bill has punitive treatment for candidates who do not agree to limit their spending. They will have to pay twice as much money, under Federal law, for television advertising, they will have to pay higher mail rates, and they will have lower individual contribution limits. This system is not a truly voluntary system like the presidential system, in which candidates are given cash bribes by the Government for agreeing to limit their campaign spending.

Our colleagues who support this bill tell us that it is necessary to restrict a candidate's spending in order "to level the playing field" between incumbents and challengers. Their contention, which is true, is that incumbents usually raise much more money, so they have set spending limits which they hope both incumbents and challengers will be able to reach. However, this strategy will not result in the same amount being spent on incumbents and challengers, because it will not stop many other avenues for spending on them. For instance, "voter education" and "get out the vote" efforts will not be affected by the restrictions in this bill.

In fact, the only "soft money" expenditure this bill will go after is political party money. We are astounded that our colleagues would take such a step. Political groups are the only groups in America that can be counted on to support the underdog in an election. Unions, businesses, teacher PACs, and virtually all other groups and organizations across the political spectrum are much more likely to give money and spend money on behalf of Members of Congress who have already been elected. However, a political party will always support its candidate, whether that candidate is the incumbent or not. This attack on political party expenditures is one of the most offensive parts of this bill. How can such funds be said to corrupt a candidate when no contributor can even say that he or she gave money to the candidate? The money is not only not given to the candidate, it is not even spent by the candidate, and helps level the playing field between challengers and incumbents.

Political parties are not the only source of campaign spending targeted by this bill. For instance, political action committees will be totally banned from giving money to candidates for office, and bundling will be outlawed as well. These provisions are constitutionally questionable (as even the drafters of the bill show they understand with the PAC provision because they have included an option B to limit PAC contributions in case a total ban is ruled unconstitutional). The more important point, though, is that these limits make poor public policy. We remind our colleagues that PACs were the great reform idea of the 1970s that was going to result in average American citizens being able to put their few dollars together into a common pool so that they could have the same influence on elections as the high-rollers. PACs have done a good job of uniting average people with common interests. Now some of our colleagues inveigh against them as "special interests."

We agree that PACs have their problems, but the solution is not to ban them from contributing to candidates. What do our colleagues suppose would happen? The PACs would make independent expenditures to express their views. We suppose our colleagues could then try to stop people from exercising their constitutional rights of free association and free speech by trying to muzzle PACs and other groups from speaking out, but it is really a futile effort. Placing limits on spending in one area is like putting a rock on jello--it just oozes out in new, more unaccountable areas. The more restrictions we put on campaign spending, the more it will be removed from the candidates, and the less accountable it will be.

If somehow the provisions of this bill were to be held constitutional, the result would be that the relative influence of speech by people other than the candidates would be greatly increased. Money would flow to the unrestricted soft money accounts of labor unions and others, and the strength of the news media to twist the debate would be greatly increased. A recent survey found that more than 90 percent of all reporters call themselves Democrats (and we do not doubt that most of the rest find the Democratic Party too conservative for their tastes). We suppose Democratic candidates would not mind too much being coerced into shutting up in elections, because most of the media voices that would continue yapping would support them instead of their Republican opponents, who would also be gagged. Republicans, however, would have a lot about which to complain.

Republican candidates are not the only ones who would have reason to complain. Instead of being upfront about this bill's costs by paying for them, its sponsors chose instead to hide them by imposing them as unfunded mandates. Television stations will have to provide free and discounted advertising time, and the Postal Service will have to provide lower postage rates (the Postal Service has already said that this mandate will force it to raise postage rates on all other Americans). Television stations, too, will undoubtedly raise their rates on other advertisers, who in turn will pass those costs on to consumers. This bill will thus act as a hidden tax on the American people. If our colleagues wanted to tax the American people to make them pay for politicians' campaigns for office, we think they should have just been upfront about it instead of using these back-door taxes.

We can find very little positive to say about this bill. It wrongly assumes that too much is spent on campaigns; it wrongly assumes it is possible to control how much is spent; it wrongly makes the taxpayers pay for its unconstitutional provisions. This bill is so bad that we will do our utmost to prevent any effort to close debate on it and pass it.

Argument 2:

We support many of the provisions of this bill, but it is not balanced, and in this highly charged political year it is unlikely that a truly fair reform bill has any chance of passing. The better procedure is to establish a nonpartisan, expert panel to develop a fair proposal, and then to consider that proposal after the elections. In an effort to make sure that this issue is decided on merit rather than

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politics, we oppose the motion to invoke cloture.